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CURRENT TOPICS

Retrospective Legislation

WHATEVER the rights and wrongs of the controversy about "dividend stripping" as a method of keeping out of the tax net, nobody, it seems, can be found to argue in justification of the retrospective method of legislation by which it is threatened to make taxable what was not previously subject to tax. The Institute of Directors made a public statement on 18th April, in which they gave examples of cases in which "dividend stripping" had been adopted with beneficial results to industry, and described retrospective legislation as a "pernicious system of law-making which can never be justified ethically or morally whatever the circumstances." In his Budget speech, the CHANCELLOR OF THE EXCHEQUER said that in 1955 there had been an official warning that the Government would not hesitate to legislate retrospectively against dividend stripping, and he proposed to make the legislation retrospective to 26th October, 1955. In the Commons on 21st April, however, he promised to "give further thought" to the question. *The Times* of 16th April appeared to welcome the penalisation of "dividend strippers," but held that "they share with other citizens the right to know that something which they do with perfect legality at the time will not be made illegal by something enacted two and a half years afterwards." If the provision were passed, it would be "the worst precedent for retrospective legislation of our time." The absurdity of government by threat was demonstrated by Mr. DONALD W. ROBERTS in a letter in *The Times* of 19th April, in which he suggested that publication by the Stationery Office of a list of Ministerial threats would be helpful to law-abiding citizens, and an edition annotated by an eminent Q.C. would doubtless meet with a ready demand. Solicitors may well shudder.

Co-operation with the Court

CO-OPERATION between the court and its officers is essential if its work is to be done with efficiency. An example of how things should not be done occurred in *Kloss* v. *Curtis*, which had come into the warned list of jury actions and was mentioned in Mr. Justice DONOVAN'S court on 17th April. A master had ordered it on 2nd April to be taken out of the current list and had further ordered that it was not to be tried before the 3rd June. The defendant's solicitors had sent the order to the plaintiffs' solicitors on 10th April, and it was contended that they had done all that could reasonably be expected of them, because the plaintiffs had the conduct of the action. Donovan, J., referred to R.S.C., Ord. 36, r. 29 (6), which provides that it is the duty of both sides to see that the

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associate or clerk is given notice of this sort of thing. It was the duty of the solicitors to the party that got the order to take it to the Crown Office and ask that the case be taken out of every list. His lordship said that, if that was not done and any costs were thrown away, he would require solicitors to pay them personally. This kind of situation can, of course, arise in a variety of circumstances. One of the most frequent occurs where it is decided to call more witnesses than the number contemplated at the time when the original forecast of the length of a case is given to the court, or for some other reason, such as disclosure of new documentary evidence, necessitating a substantial prolongation of the cross-examination, the case will clearly take longer than was at first thought. Counsel sometimes has the opportunity to point these things out, but the responsibility is, of course, primarily that of the solicitor.

Extraordinary and Unjust ?

In a recent case in the Chancery Division in which a victim of poliomyelitis, the infant son of an intestate's first marriage, sought an order for reasonable provision out of the intestate's estate of less than £5,000, Roxburgh, J., is reported as having said that it was " extraordinary that the widow should take the whole estate where there is an infant child of a former marriage." His lordship thought that such a result was reasonable where the widow was the child's mother, but where she was his step-mother it was, in his lordship's view, " contrary to justice " as, in this particular case, in the opinion of Roxburgh, J., the intestate's obligation to his son was comparable to that to his second wife. The Inheritance (Family Provision) Act, 1938, as amended by the Intestates' Estates Act, 1952, does enable a son or daughter of a previous marriage to claim reasonable provision out of the intestate's estate, but if (which we do not suggest) these enactments do not provide sufficiently for such issue, it may be that Parliament should consider amending the law still further in this respect. It can at least be said that the Act of 1952 has considerably strengthened the position of a surviving spouse or child, as before that time they were unable to seek an order for reasonable provision where the breadwinner died without making a will.

Attestation of Wills

Section 9 of the Wills Act, 1837, provides that the testator's signature shall be " made or acknowledged by the testator in the presence of two witnesses present at the same time " and that " such witnesses shall attest and shall subscribe the will in the presence of the testator." As the Act makes no mention of the part of the will on which the witnesses are to subscribe, it has been decided that they may sign their names on any part of the document if it is apparent that the signatures are intended to attest that of the testator (*In the Goods of Davis* (1843), 3 Curt. 748). In *In the Goods of Frances Peverett* [1902] P. 205, the court applied the presumption *omnia præsumuntur rite esse acta* to the case of a will which did not contain an attestation clause but bore the signatures of two persons, both of whom were dead, and in *In the Estate of Denning* [1958] 1 W.L.R. 462 ; *ante*, p. 293, Sachs, J., thought that he was going one step further when he held that two signatures written upside down on the reverse side of a will to the dispositive words and the signature of the testatrix constituted a sufficient attestation. His lordship deemed " it proper to take that step further because it seems . . . that there is no practical reason why those names should be on the back of the document unless it was for the purpose of attesting the will." Whether or not this decision amounts to a further step may be doubted, as in *In the Goods of Davis, supra*, Sir H. J. Fust held that a will would be admitted to probate which had been signed by the testator at the end of the first side of the sheet of paper and attested on the second side. It must be admitted, however, that in this case the witnesses' signatures were not written upside down !

Uneasy Laymen

Justinian once said that " Justice is the constant desire and effort to render to every man his due." From time to time cases are reported in the Press in such a manner as to infer that in those particular instances somebody has not received his due : in fact, that justice as we know it is not as just as may be desired. An example of this occurred recently in the *News Chronicle* (15th April). Two men invented a safe-breaking machine and on their own admission used it on twelve occasions and stole hundreds of pounds. By way of punishment they were ordered to make restitution and were conditionally discharged. Below this report was a note of a case where a sixty-seven-year-old lady was fined £25 for stealing 5s. 5½d. worth of butter. It was her first offence. Immediately before this case was heard a young man, who had three previous convictions, was sent to prison for six months by the same court for stealing a book worth 7s. 6d. from a public library. The paper also reported that some people who had stolen two television sets were put on probation. In an advertisement in the same issue mention was made of a mother who flogged a small girl for an hour with a knotted rope : her punishment was six months in prison. We appreciate that it is sometimes difficult for those who necessarily base their judgment on such reports not to entertain a certain uneasiness of mind. We would simply make these two comments. Magistrates have a wide discretion as to sentence and in exercising this discretion they are, of course, influenced by *all* the facts, their impression of the accused and his past record. The reader of a newspaper is denied these. Secondly, if a prisoner feels that a court has been unduly severe, he is entitled to seek justice by the exercise of his right of appeal. We share the view that these are two of the factors which, so far as is humanly possible, contrive that every man receives his due.

RIGHTS OF ACCESS BY THE PUBLIC TO PRIVATELY OWNED LAND

THE public cannot acquire a right to wander at will over privately owned land at common law—there is no *jus spatiandi* akin to a public right of way (*A.-G.* v. *Antrobus* [1905] 2 Ch. 188—the Stonehenge case), even if such rights may be acquired for the benefit of specific persons as a private easement (*Re Ellenborough Park* [1956] Ch. 131). Under the National Parks and Access to the Countryside Act, 1949 (Pt. V), however, the local planning authority (except in the area of a county borough, unless the council have specifically adopted the provisions of Pt. V: see s. 61 (3)) may take steps to secure public access to "open country."

"Open country" is defined (by s. 59 (2)) as meaning any area which appears to the authority "to consist wholly or predominantly of mountain, moor, heath, down, cliff or foreshore (including any bank, barrier, dune, beach, flat or other land adjacent to the foreshore)." "Waterways" also are included in the areas of the National Parks, these being defined (by s. 114 (1)) as meaning "any lake, river, canal or other waters being (in any case) waters suitable, or which can reasonably be rendered suitable for sailing, boating, bathing or fishing." From areas of open country are to be excluded temporarily any land which is *for the time being* "excepted land"; there are eight classes of excepted land specified in s. 60 (5), but the most important of these are agricultural land (except such land that is only used for rough grazing for livestock), golf courses, race-courses, aerodromes, and land covered by buildings and their curtilages. Woodlands are permanently excluded where public access would threaten to endanger timber production, on the grounds of either commerce or amenity (see s. 79), and, where it is expedient so as to avoid danger to the public or persons employed on the land, particular land may be excluded from public access rights by s. 80.

Methods of securing access

Rights of public access may be secured by any one—or more—of three methods. The local planning authority may—

(*a*) make an "access agreement" with any person having an interest in the land, being open country (s. 64);

(*b*) make a (compulsory) "access order," where it seems that the making of an access agreement would be "impracticable" (s. 65);

(*c*) acquire the land—being open country which is not "excepted land"—compulsorily for the purpose of public access (s. 76).

In addition, in a National Park, land may be acquired for this purpose, either compulsorily or by agreement, by the Minister of Housing and Local Government (s. 77).

Preliminary procedure

Before exercising these powers, the local planning authority should first have carried out a survey for the purpose of ascertaining what open country there is in their area, and what action should be taken "for securing access by the public for open-air recreation" (s. 61 (1)). When this survey has been completed, the local planning authority must report thereon (even if there should be a "nil" return: s. 62 (2)) to the Minister, and a notice must be published in the local Press and the *London Gazette*, giving the public an opportunity to make representations to the Minister (see s. 63 and s. 62 (3) and (4)). The Minister must consider any such representations and hold either a public local inquiry or a private "hearing" before one of his officers. It is not legally necessary under the Act that the need to secure public access to a particular parcel of land should have been shown in this survey, as a condition precedent to the making of an access agreement or access order, but if an access order is being made and the land does not appear in the survey, the landowner will have a strong argument on which to base his objections.

Effect of access agreement or order

Where public access has been secured to a stretch of open country in private ownership, by means of either an access agreement or an access order, any person may enter that land without being a trespasser or incurring any liability by reason only of entering or being on the land, provided he does not damage any wall or gate, etc., or light a fire or drive a vehicle, hunt or fish, or cause any damage or hold a political meeting, etc. (s. 60 (1) and Sched. II). These restrictions are comparable with, but in some respects go further than, the restrictions on the rights of the public over commons and waste lands under s. 193 of the Law of Property Act, 1925. The 1949 Act (unlike the 1925 Act) does not, however, prohibit camping on the land. The purposes for which a person may enter are not specified, but these are presumably for "open-air recreation," an expression which is defined in s. 114 (1) merely by the exclusion of "organised games." A religious meeting is not prohibited, unless by the implication that it would not amount to "open-air recreation"—but neither would a political meeting! A person entering must also comply with any byelaws made by the local planning authority affecting the land under s. 90. If he fails to observe any of the above restrictions contained in the Act he is liable to be treated as a trespasser and (presumably) ejected by the landowner, but he will not thereby fall foul of the criminal law; that sanction is reserved for offences against the byelaws (if any), which may of course cover substantially the same matters, being made "for the preservation of order, for the prevention of damage . . . and for securing that persons resorting thereto will so behave themselves as to avoid undue interference with the enjoyment of the land or waterway by other persons."

Landowners' remedies

What then are the remedies of a private landowner if he is unwilling to permit public access and he learns that the planning authority are considering the application of Pt. V of the Act to his land?

Representations to the Minister on the statement published by the local planning authority after they have carried out their review will do the landowner no good, for it seems the Minister can take action (see s. 63 (2) and s. 62 (4)) under the Act only where the representations are to the effect that further action towards securing public access is required, beyond that shown on the map prepared by the local planning authority.

The first approach from the planning authority should be towards the making of an access agreement, for the authority must try this method before they make an access order. The landowner cannot be compelled to enter into such an

agreement, but he will be best advised to discuss the matter fully with the authority's representatives, and if he does not wish to allow public access, endeavour to persuade them that his land is not open country, or that so much of it would be " excepted land " or protected woodlands or danger areas that the securing of public access to the remaining portions would not be worth while, or, finally, that the public would not wish to use such rights if they were in fact secured. The final decision in a dispute whether land is open country is in the hands of the planning authority : see definition in s. 59 (2) ; presumably the decision could be questioned in the courts on (e.g.) an action for a declaration, if it were plain that there was no evidence at all on which the authority could have decided that the land was open country. The use of the expression " where it appears " to the planning authority excludes any judicial review, provided the authority decide honestly and in good faith : see the reasoning in, e.g., *Franklin* v. *Minister of Town and Country Planning* [1948] A.C. 87.

Advantages of agreement

If the landowner has no very good reasons in law for resisting public access to his land he will probably find it more in his interest to enter into an access agreement than to await the making of an access order, for in the case of an agreement he will probably be able to secure better terms. Under s. 64 (2) the agreement may provide for the making of a payment by the authority in consideration of the agreement, and this may be payable forthwith—under an access order compensation based on the depreciation in value of the interest in the land may be claimed, but this will not normally be payable until the lapse of five years after the coming into effect of the access order (s. 71). In addition, the authority may make a contribution towards any expenditure incurred by the person making the agreement in consequence thereof. Further, in the case of an agreement, the owner may be able to insist on boundary notices and/or fences being erected and on byelaws being made by the planning authority ; under an access order, the owner will not be able to insist on such matters.

An access agreement may be entered into by a tenant or other limited owner, but normally, no doubt, the planning authority will endeavour to reach agreement with all persons interested in the land. An agreement binds only the person with whom it is made—the burden does not run with the land—and in this respect also an agreement may well seem preferable to the making of an access order.

Making an access order

If the local planning authority eventually decide to make an access order, the procedure will be very similar to that applicable to the making of a compulsory purchase order. The procedure of Sched. I to the Act must be followed, and the notices must follow the forms in Sched. II to the National Parks and Access to the Countryside Regulations, 1950 (S.I. 1950 No. 1066). Representations or objections to the order may be made to the Minister, and he must then hold either a public local inquiry or a private " hearing," and as a consequence thereof he may confirm, modify or quash the order. The recent circular of the Ministry of Housing and Local Government, Circular 9/58, dated 27th February, 1958, which implements certain of the recommendations of the Franks Committee (notification of the authority's case in advance to the objector ; publication of the inspector's report on the inquiry, etc.), does not apply to these inquiries. If the order is confirmed, notice thereof has to be published, and then within six weeks of the date of such publication " any person " (*not* " any person aggrieved," as in the corresponding provision in the Acquisition of Land (Authorisation Procedure) Act, 1946) may make an application to the High Court in accordance with R.S.C., Ord. 55B, for the order to be suspended or quashed on the ground that the order is not within the powers of the Act or that the interests of the applicant have been substantially prejudiced by a failure to comply with the requirements of the Act or regulations made thereunder (Sched. I, Pt. III, para. 8).

Compensation

When an access order has been duly made, compensation may be claimed in respect of any depreciation in the value of the claimant's interest in the land as a consequence of the making of the order, but, as stated above, this may not normally be claimed for a period of five years after the making of the order. The claim may be *recorded* earlier (see s. 72), and interest will be payable as from the date of the coming into operation of the order (s. 72 (5)), at the rate for the time being applicable to cases where land compulsorily acquired is entered before completion of the acquisition (National Parks, etc., Regulations, 1950, art. 24 (4) ; the rate at present is 7 per cent. per annum by virtue of the Acquisition of Land (Rate of Interest on Entry) Regulations, 1957 (S.I. 1957 No. 1803), made under s. 57 (2) of the Town and Country Planning Act, 1947). In any case of " undue hardship " payment of the compensation on account may be claimed before the end of the five-year period (see s. 73).

Land affected by access agreement or order

When an access agreement or access order is in force in relation to any land, no person interested in the land may carry out any work on the land whereby the area to which the public have access is " substantially reduced " ; but this does not affect or prevent the cultivation of the land, or (subject of course to planning permission in the ordinary way) the erection of buildings, or the doing of anything else whereby any part of the land subject to the agreement or order becomes " excepted land " (s. 66 (1)). The local planning authority have powers to secure the provision of means of access to the land which is the subject of the agreement or order (s. 67), and they can enforce the public rights of access (s. 68). Maps of any land subject to an access agreement or access order, or which has been acquired for the purposes of public access, must be maintained by the local planning authority and kept available for public inspection (s. 78). The advisers of a purchaser of land that may include " open country " should therefore inspect these maps, and include a special question in the supplementary inquiries made (of the county council) at the time when the local land charge search is made. Access agreements are probably not registrable as local land charges, as they do not " run with the land," but access orders, by virtue of the restrictions imposed by s. 66 (1), are probably registrable. They are not made expressly registrable by the Act of 1949, but amount, it is submitted, to a restriction imposed by a local authority, within s. 15 (7) (*b*) of the Land Charges Act, 1925, as amended by the Schedule to the Law of Property (Amendment) Act, 1926. However, it is suggested that reliance should not be placed on the local land charges register, as it is doubtful whether the validity of an access order as against a purchaser for value can be affected by a failure to register the order, in view of the uncompromising provision in s. 66 (1), and in spite of the terms of s. 15 (1) of the Land Charges Act, 1925.

Public path orders

Somewhat similar to the power to make an access order is the power given by s. 40 of the 1949 Act to make a "public path order," which acquires compulsorily for the benefit of the public rights of way over defined paths on land, where the council of the county borough or county district (*not* the local planning authority as such) in whose area the land is situate are satisfied there is "need" for such a public right of way. The procedure leading up to the making of a public path order is very similar to that applicable to an access order.

J. F. GARNER

Common Law Commentary

FUND TO PAY THIRD PARTY

BY a coincidence, two recent decisions in different branches of the law give us two examples of exceptions to the doctrine of consideration, but as they are both in realms which are not necessarily classed under the law of contract, it could be said that they are not so much exceptions to consideration as examples of non-contractual promises.

The first case concerns circumstances where *A* is owed money by *B*, and he requests *B* to pay the money, or part of it, to *C*. This by itself imposes no duty or liability on *B* and so no right or claim in *C*. But if *B* accepts the mandate and *if he promises C* that he will pay, then the promise becomes legally enforceable by *C* against *B*, although there is no contract between them, and no consideration. The action is not an action in contract but in quasi-contract for money had and received. The principle was laid down by Blackburn, J., in *Griffin* v. *Weatherby* (1868), L.R. 3 Q.B. 753 (following the earlier case of *Walker* v. *Rostron* (1842), 9 M. & W. 411), in the following words: "Ever since the case of *Walker* v. *Rostron* it has been considered as settled law that where a person transfers to a creditor on account of a debt, whether due or not, a fund actually existing or accruing in the hands of a third person, and notifies the transfer to the holder of the fund, although there is no legal obligation on the holder to pay the amount of the debt to the transferee, yet the holder of the fund may, and if he does promise to the transferee, then that which was merely an equitable right becomes a legal right in the transferee, founded on the promise; and the money becomes a fund received or to be received for and payable to the transferee, and when it has been received an action for money had and received for the use of the transferee lies at his suit against the holder."

Subsequent transactions

In the recent case on this point (*Shamia* v. *Joory* [1958] 2 W.L.R. 84; *ante*, p. 70), the problem that arose for decision was, in effect, what happens if the holder of the fund, as a result of subsequent transactions, ceases to be holder of a fund at all, or of enough money to meet the sum due to the third party? Barry, J., decided that subsequent transactions cannot be taken into account, so that the third party may still claim the full amount promised.

The plaintiff in the case was an Iraqi who was a dental student in England. One of his brothers in Iraq was employed by the defendant, who was an Iraqi carrying on business in England, to manage property for the defendant, and sums of money became due to the brother in question. For some reason which is not clear the plaintiff was advised by the brother in Iraq that another brother in Iraq had made the plaintiff a gift of £500 which would be paid by the defendant. It seems clear, however, that the money was really part of the money due from the defendant to the first brother. The plaintiff wrote to the defendant for confirmation of the gift and the defendant wrote and confirmed.

Subsequently the defendant sent a cheque to the plaintiff for the £500, but owing to a technical error in the cheque it was not paid. The cheque was returned to the defendant for correction, and he promised to return it corrected, but failed to do so, or to make the payment in any other way. By this time trouble had arisen between the defendant and the brother of the plaintiff in Iraq who was managing the defendant's properties, and the upshot of those difficulties was that the defendant no longer owed money to the brother—on the contrary, the brother then owed the defendant forty-seven dinars. For that reason the defendant refused to pay the plaintiff, but, as we have seen, his view of his legal liability was incorrect.

The court rejected arguments that the plaintiff was an equitable assignee on the ground that there was no evidence that notice had been given to him. This reasoning cannot refer to the notice which an assignee normally gives to the holder of the fund, so it must refer to the notice which a donor must give to a donee before the gift can be effective. A second argument rejected was that the transaction over the return of the cheque was a contract for consideration of which there had been a breach.

Banker's confirmed credits: dispute as to quality of goods

The second case arises out of bankers' confirmed letters of credit, which have for some time been recognised as obligations enforceable against the bank at the suit of the payee, notwithstanding that there is no real contractual relationship between those parties and so nothing representing consideration. In the case in question (*Hamzeh Malas & Sons* v. *British Imex Industries, Ltd.* [1958] 2 W.L.R. 100; *ante*, p. 68), the Court of Appeal had to consider the effect of a complaint as to the quality of the goods in respect of which the bankers' confirmed credit had been arranged: it was contended that the credit could be stopped on the ground of failure to deliver goods of the quality stipulated.

The contract in respect of which the confirmed credit was opened was for purchase of steel reinforcing rods from an English firm in two parcels, and there were two letters of credit—one for each parcel. The letters were duly opened and the first of them was realised by the vendors who had despatched the goods. The purchasers alleged that the first instalment was defective and consequently applied for an injunction to restrain the vendors from drawing on the second letter of credit, which was for £23,000. The order sought was not against the bank but merely against the vendors.

The Court of Appeal refused to grant the injunction on the ground that the confirmed credit imposed an absolute duty upon the banker to pay, irrespective of any dispute there might be between the parties as to whether the goods were in accordance with the terms of the contract or not.

The court pointed out that an elaborate commercial system had been built up on the basis that bankers' confirmed credits were of that character. Moreover, a vendor of goods selling against a bankers' confirmed credit is selling under an assurance that nothing will prevent his receiving the price, and that is an advantage not lightly to be interfered with in deals between parties in different countries. Often such vendors are re-selling goods bought from someone else and they may be wanting to finance the matter out of the letter of credit. The system would fall to pieces if a dispute between some of the parties could "freeze" the letter of credit.

Banker's obligation

There was a second action over this contract (*British Imex Industries, Ltd.* v. *Midland Bank, Ltd.* [1958] 2 W.L.R. 103; *ante*, p. 69), heard a week later, in which the vendor sued the bank for refusing to pay out of the confirmed credit against sight drafts. The reason the bank refused to pay was that under the terms of the letter of credit the money was payable on presentation of sight drafts accompanied by invoices and "shipped" bills of lading evidencing shipment by a certain date. But there was an added clause in the bill of lading which provided that in the case of iron and steel cargo the vessel would not be responsible for correct delivery, etc., as a result of insufficient securing or marking. The bank pointed out that there was no acknowledgment on the face of the bills of lading that the terms of this added clause had been complied with.

Salmon, J., held that the bank could not on that account refuse to pay. It was not the duty of the bank to concern itself with compliance with these clauses. So long as "clean" bills of lading were presented, the vendors were entitled to be paid. There was nothing in the terms of the letter of credit which called for an express acknowledgment that any special clauses in the bill of lading had been performed. Even if the bank was under a duty to examine the bill of lading, there was nothing in the clause in question, nor in the Hague Rules (which applied) to require any express acknowledgment of compliance with the terms of the clause.

These cases show that a useful form of security can be created in either of these ways, thereby considerably facilitating commercial transactions, especially between parties in different countries.

L. W. M.

A Conveyancer's Diary

AN ESTATE DUTY CHIMERA

To judge from my own experience, there must have been a good many agitated telephone calls between lawyers in distress on the morning on which the report of *Fry* v. *Inland Revenue Commissioners* appeared in *The Times* newspaper. The headings made horrifying reading: "Sale of Reversion to Life Tenant—Estate Duty Payable on Her Death," and later, "Merger Rule 'Theoretical and Obsolescent.'" What was the effect of the case on the well established device for saving estate duty which would otherwise be payable on the death of a life tenant by arranging a transfer of the reversionary interest to the life tenant? The view of the Estate Duty Office (I quote from Dymond on Death Duties, 12th ed., p. 115) is that the acquisition by a life tenant of the reversionary interest immediately expectant on his death in such circumstances that the two interests merge does not effect a determination of the life interest giving rise to a potential charge for duty under s. 43 of the Finance Act, 1940, but rather an enlargement of his interest. Had *Fry's* case reversed the principle upon which this beneficent rule was based? Only a very close examination of the facts in the case could reveal that these fears were a chimera, and it was not easy to obtain a true view of the facts (which disclosed a situation not very familiar to the practitioner unacquainted with the *minutiæ* of estate duty legislation) from the necessarily short contemporaneous report of the case. The case has now been fully reported (see [1958] 2 W.L.R. 673; and p. 271, *ante*), and can consequently be examined in detail.

The facts

Under the will of her father a fund was held upon trust to pay the income to a life tenant during her life, and after her death the capital of the fund was limited on various trusts for her issue and, in default of issue, for the life tenant's brothers. The life tenant was a widow, over eighty years old at all material times, and she had never had any children; and it was therefore a physical certainty that on her death the remainder over in favour of her brothers would take effect. There were four brothers, and in 1954 the life tenant acquired by purchase the interests in remainder of all of them. The reported case, however, concerned the interest of one only of the brothers, *C*, who had died in 1940; in the case of his share, the purchase was from his personal representatives. Now *C* at his death had either an interest, in one-quarter of the trust fund, contingent on the life tenant having no issue, or a similar vested interest liable to be divested by the birth of issue to the life tenant. Either way, it was an asset of his estate and, for estate duty purposes, an "interest in expectancy" within the definition in s. 22 (1) (*j*) of the Finance Act, 1894. That being so, the personal representatives of *C* had an option at his death under s. 7 (6) of the Finance Act, 1894, to pay duty on the interest either with the duty in respect of the rest of *C's* estate or when the interest should fall into possession. They elected to pay duty (no doubt very wisely, having regard to the conditions prevailing at the time of their testator's death) when the interest should fall into possession, i.e., but for the arguments subsequently advanced, on the death of the life tenant.

The plaintiff's argument

After the life tenant has purchased this interest, however, the Commissioners claimed duty (in *C's* estate) on the footing that *C's* interest fell into possession when that purchase was made in 1954. Alternatively, it was claimed, estate duty would be so payable on the interest on the death of the life tenant. On behalf of the plaintiff, the surviving executor of *C*, it was contended that no estate duty was or ever would be

payable in respect of *C's* interest in the fund, as that interest had not fallen and never could fall into possession within s. 7 (6) of the 1894 Act. The definition of that phrase offered by counsel for the plaintiff was that an interest in expectancy falls into possession when the holder of the interest becomes entitled by virtue of the interest to present enjoyment of the property. On this definition, it was thus argued, after she had purchased *C's* interest in the fund the life tenant did not become entitled to present enjoyment of the property by virtue of that interest, because she already had present enjoyment by virtue of her life interest. That interest was enlarged into absolute ownership as a result of the purchase and the merger of interests consequent thereon, and, therefore, the interest in expectancy could never fall into possession.

Interest in favour of issue

Arguments were then evidently addressed to the court on the nature and effect of the merger of interests (there is no separate note of the arguments of counsel yet available, but a considerable part of the not very long judgment in this case is devoted to the principles on which merger takes place; this question must therefore have been the subject of argument). The main difficulty in the way of the plaintiff's argument, that, as the two interests had merged, the interest in remainder would never fall into possession, was the interposition between the trust interests of the life tenant and *C* respectively of the interest in favour of *C's* issue. As the learned judge observed, although the Chancery Division permits trustees to distribute property, in a suitable case, on the footing that a woman is past the age of child-bearing, at law the rule is different: for the purposes of the rule against perpetuities, for example, no such presumption can, as the law now stands, be made. In the circumstances, assuming a merger to have taken place, could the birth of issue to the life tenant be regarded as theoretically possible so as to cause a possible opening of the merger, with the result that the interest of *C* (or, rather, his executor) was not an indefeasible vested interest when the life tenant purchased it in 1954?

Duty payable on death of life tenant

But in the end this and similar questions which Danckwerts, J., put to himself were never answered, the questions before the court being disposed of on a different footing. Danckwerts, J., said that such "theoretical and obsolescent rules" as those of the doctrine of merger of interests ought not to be allowed to decide liability to estate duty. The life tenant had a life interest, and when she purchased the interests in expectancy of her brothers in 1954 she also acquired the interests which would take effect in the event of her death without issue, but would confer no right to possession at any earlier date than her death. The fact that the trustees, acting on the impossibility of the life tenant having issue, had handed over the capital to her was not the same thing as the falling into possession of the interest in expectancy. If, Danckwerts, J., went on (and this is the essence of the decision), the interest in expectancy did not fall into possession on the purchase in 1954, it would fall into possession in the estate of the life tenant on her death. The practical result of the decision was, therefore, that, as the personal representatives of *C* had elected to pay estate duty on *C's* interest in expectancy when it fell into possession, payment would have to be made then. The difficulties of valuation, to which Danckwerts, J., referred, would also have to be faced then.

Not the usual case

This was, then, a very different case from the ordinary one with which we have become familiar of a life tenant acquiring, usually by purchase, the interest of a person or persons absolutely entitled in remainder subject to the life interest. The object of such a transaction has been to avoid a charge of estate duty on the value of the whole of the settled property which otherwise would have arisen by reason of the passing of the property on the death of the life tenant. The whole matter which was convassed in *Fry's* case was liability to a charge of estate duty which (as matters went) had attached itself on the death of the remainderman to his interest in the settled property, and subject to which the life tenant had acquired that interest. There had, in *Fry's* case, been a sale of the reversion to a life tenant, and it was there held that estate duty would be payable on her death, as the heading to the report of the case in *The Times* indicated; but the estate duty was payable, potentially, before the life tenant had acquired the reversion, and that acquisition had nothing to do with the charge to duty.

Budget changes

Well, according to the Financial Statement, we shall soon see a change in the law, or the practice, which has regulated transactions of this kind in the past, and the likely change is one which will make it necessary for the life tenant to survive the transaction by at least five years if payment of duty as on the passing of the entire settled property upon the death of the life tenant is to be avoided. Such a change would have the effect of abolishing the somewhat artificial distinction which has existed, for estate duty purposes, between purchases of reversions on the one hand and family arrangements providing for a straightforward division of settled property between the persons entitled on the other. But the change will only, according to the Statement, take effect where both the purchase and the death occur after the 15th April, 1958. Where the purchase occurred before that date, the old exemption will apply, untrammelled (as I hope I have shown) by anything in *Fry* v. *Inland Revenue Commissioners*.

"A B C"

Mr. J. H. EXLEY, clerk to the justices for Derby County, Allestree and Repton Petty Sessional Divisions, has been appointed to a similar post at Ashbourne, Derbyshire.

Alderman JOHN BARKER MAUDSLEY solicitor, of Maidenhead, has been appointed vice-chairman of the Housing Committee of the Association of Municipal Corporations.

Mr. T. A. TOWNDROW, assistant solicitor to Maidenhead Town Council, has been appointed deputy town clerk of Windsor in succession to Mr. J. E. GREENWOOD, who has been appointed to Maidstone.

The following promotions and appointments are announced in the Colonial Legal Service: Mr. H. R. J. LEWIS, Crown Counsel, Fiji, to be Solicitor-General, Fiji; Mr. D. B. MCGILLIGAN, Crown Counsel, Sarawak, to be Magistrate, Sarawak; Mr. L. M. MINTY, Magistrate, Bermuda, to be Senior Magistrate, Bermuda; Mr. C. F. B. ORR, Deputy Clerk of the Courts, Jamaica, to be Clerk of the Courts, Jamaica; Mr. G. J. E. REIDE, Resident Magistrate, Tanganyika, to be Senior Resident Magistrate, Tanganyika; Mr. E. W. L. M. CORBALLY, M.C., to be Magistrate, Hong Kong; Mr. I. M. S. DONNELL to be Magistrate, Hong Kong; and Mr. B. V. RHODES to be Magistrate, Hong Kong.

Landlord and Tenant Notebook

THE LANDLORD AND TENANT (TEMPORARY PROVISIONS) BILL

THE first thing that strikes one about this Bill is its name. To bring in the words " rent restriction " would no doubt be inconsistent with the somewhat specious claim that no amendment of the Rent Act, 1957, is proposed, commented upon in our " Current Topics " on 12th April (*ante*, p. 255); something about prevention of eviction would be nearer the mark, but perhaps it has been recalled that the Prevention of Eviction Act, 1924, not only described itself as an amending Act, but became a lasting feature of the legislation. Curiously enough, however, the body of the Bill always refers to " owners " and "occupiers " and not to landlords and tenants. This, though not the use of the word " rent," is in keeping with its objects. For the sake of convenience and clarity, I propose to call the parties landlords and tenants.

This Bill proposes " to prohibit the recovery of possession, except by legal proceedings, of certain dwelling-houses released from control by, etc. . . . and to provide in certain cases for suspending for a limited period the execution of any order made in such proceedings; to regulate the terms and conditions as to rent and other matters to be applied in cases where possession of such dwelling-houses is retained pending the recovery of possession. . . ."

Scope

The " certain dwelling-houses " are defined in cl. 1 (2) and (3). They are those decontrolled by the Rent Act, 1957, s. 11 (1), and of which it can be said that (i) a Rent Act, 1957, Sched. IV, para. 2 (2), notice has been served on the tenant, i.e., a " Form S " notice to tenant to determine tenant's right to retain possession of decontrolled premises; and (ii) that notice has not been complied with. But the new Act is to cease to apply if the occupier either ceases to retain possession or retains possession under a tenancy not expiring earlier than three years from its commencement and not terminable by a landlord's notice during that period. And " without prejudice to the foregoing provision," the new Act is not to apply to a dwelling-house during *any* period during which the occupier is entitled to possession as tenant of the owner.

This seems to leave a small but select class of tenants exposed to the weather; those on whom no " Form S " notices need be served, e.g., because they hold under fixed terms expiring after 6th October, 1958.

No " do it yourself "

The prohibition imposed on recovering possession otherwise than by legal proceedings is contained in cl. 1 (1) and includes prohibition of withholding or withdrawing, " without reasonable cause," services or furniture to which the occupier is for the time being entitled. The draftsman has been aware of the recognition of the right to recover peaceable possession to be found in *Hemmings and Wife* v. *Stoke Poges Golf Club, Ltd.* [1920] 1 K.B. 720 (C.A.), and the proposal reinforces the prohibition by making it a criminal offence (penalty, up to £100 fine, six months' imprisonment, or both) to contravene the provisions—this without prejudice to civil liability.

It may be recalled that it was by something like a *tour de force* that the Court of Appeal held, in *Remon* v. *City of London Real Property Co.* [1921] 1 K.B. 49 (C.A.), that protected tenants were protected against extra-legal recovery of possession: the Rent Acts purport to fetter the court, not the landlord (*Barton* v. *Fincham* [1921] 2 K.B. 291).

Conditions of suspension

If and when the landlord sues for possession, the court is to suspend any order if satisfied of four things.

The first two are that the tenant has made all reasonable efforts to negotiate a not less than three years' tenancy and that he is unable, after taking all reasonable steps for the purpose, to obtain other appropriate accommodation (cl. 3 (1) (*a*) and (*b*)). In each of these cases regard is to be had, among other things, to the means of the occupier, to his age, and to any disability to which he may be subject (cl. 3 (3)); and " means " includes the means of any member of the family of the occupier residing with him who has contributed or might reasonably be expected to contribute to the expenses of the household (cl. 3 (6)).

Presumably courts will have to consider the amount of rent offered and the condition of the premises when deciding whether efforts to negotiate a tenancy have been reasonable. The introduction of the adjective " appropriate " to qualify alternative accommodation is perhaps a little unexpected when one considers the very thorough definition of " suitable " in the Rent, etc., Restrictions (Amendment) Act, 1933, s. 3 (3). But it may serve to emphasise the difference between the positions dealt with. When availability of alternative accommodation is relied upon as a ground for possession, the onus is on the landlord, and the requirement of reasonable equivalence of security of tenure goes together with the other requirements (means of tenant, needs of tenant and family as regards extent, character); something lasting is contemplated. But this Bill envisages a temporary move while permanent accommodation is being sought, and I submit that courts will not be expected to find accommodation inappropriate merely because tenants and their families will have to " rough it a bit."

The third condition is that the tenant shall have paid or tendered all rent since the expiry of the notice to terminate down to the date of the hearing, and a reasonable sum in respect of any unascertained rent (I will deal with the calculation and ascertainment of rent presently); and the last is that, having regard to all circumstances of the case, greater hardship would be caused by making an unsuspended order for possession than by granting suspension. It will be noted that the burden is on the tenant and that he must prove a " balance of hardship " which will work out in favour of his contention.

Suspension may be refused or revoked if, had the Rent Acts still applied, the court would have had power to make an order for possession (cl. 3 (5) (*b*)). The language is permissive; and it will be important to remember that, before such an order can be made, the court must not only be satisfied as to one of the grounds set out in the Rent, etc., Restrictions (Amendment) Act, 1933, Sched. I, but also consider it reasonable to make the order (Act of 1933, s. 3 (1)).

Rent and terms

There are two stages to be considered: the period between the expiration of the notice to terminate and the court's decision on the application for a possession order, and that which follows the grant of suspension; and the rent payable may not be the same throughout both.

When the notice has expired, the tenant is, *prima facie*, to pay a rent made up of (i) twice the 1956 gross (i.e., November, 1956) value of the dwelling-house; (ii) the annual amount of any rates of the dwelling-house borne by landlord or superior landlord, for each rental period (ascertained in accordance with the Rent Act, 1957, Sched. II); and (iii) a reasonable charge for any services or furniture to which he is entitled during the rental period (to be determined by agreement or, in default, by the county court). But if this works out at less than the rent last payable before the notice expired, that amount remains effective, and is subject to any variations in rent limit required by the Rent Act, 1957, s. 3 or s. 4 (adjustments in respect of rates and in respect of services and furniture) (cl. 2 (2)).

But if an order suspending execution is made, the court is to fix the future rent, and here something like a "means test" is introduced. The rent is to be such as the landlord demands unless the court is satisfied that this would be beyond the tenant's means; in which case it makes the rent such as is within his means, but not less than what was payable before suspension (*not* before the notice to terminate expired). Thus a wealthy tenant might, it appears, have to pay a heavy price for the grant of a suspended order; one which might exceed the market value of the premises and perhaps induce him to accept a three years' lease (not restricting alienation). Again, family contributions count (cl. 3 (2) and (6)).

It will have been noticed that only one "multiple"—2—is employed for determining the first stage rent by reference to gross value; this in contradistinction to the variety offered by the Rent Act, 1957, s. 1, and Sched. I, Pt. I, according to incidence of liability for upkeep. This will be because, while cl. 2 (1) of the Bill proposes that the terms and conditions of the "relevant tenancy" (which means whatever tenancy was in force, contractual or statutory, when the Rent Act, 1957, commenced on 6th July, 1957: cl. 5 (1)) are to apply, apparently, throughout both periods, the tenant is to be treated as exclusively responsible for internal decorative repairs and the landlord for all other repairs which are required in order to make good damage or dilapidations occurring while the enactment applies; which, however, is not to be the case when the rent is (see the conclusion of my last paragraph but one) at the rate payable before the notice to terminate expired (cl. 2 (2)). Dilapidations, in this case, can hardly mean "damages for breach of covenant to repair"! And an order suspending execution cannot, it seems, vary this apportionment of liability.

Duration

A suspended order is to suspend execution for not less than three, nor more than nine, months (cl. 3 (1)); but if an agreement for sale or the granting of a tenancy is in force, such agreement having been made before 2nd April last (when intention to legislate was revealed), and that agreement obliges the landlord to give vacant possession on a specified date, *and* the purchaser or tenant requires the dwelling-house for his own occupation or that of a son or daughter over eighteen or that of his father or mother, suspension is not to be granted beyond the date for vacant possession (cl. 3 (5) (*a*)). There seems to be no provision for a case in which a purchaser intends demolition; nor does the clause stipulate that purchaser or tenant or relative shall require the dwelling-house for occupation as a residence.

An extension may be granted if the tenant can still satisfy the conditions as to inability to obtain appropriate accommodation, as to not being in arrear with rent, and as to balance of hardship—and if he makes his application at least one month before the period of the existing order is to expire (cl. 3 (4)). Thus, there are to be no last minute applications or putting-off of bailiffs by promises to make such.

And it is proposed that the Act "shall continue in force until the expiration of the period of three years beginning with the date on which it is passed, and shall then expire" (cl. 5 (4)). The last words do remind one of the "during the continuance of the present war and for a period of six months thereafter *and no longer*" of the (repealed) Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, s. 5 (2).

R. B.

HERE AND THERE

THE DARK COURTS

REGULAR readers of Paul Jennings in *The Observer* must be well aware of his almost haunted preoccupation with the "otherness" of the objects and groups which surround him. I have not noticed that this mystical awareness permeates the personalities inhabiting London's legal world, which starts, so close to *The Observer's* offices, at the end of Tudor Street. For them what is "other" is irrelevant. And yet, for the world at large, they are themselves permanently enwreathed in an aura of "otherness." If you would like to plunge into an almost unearthly sense of the "otherness" of which the legal quarter is capable you should keep a careful watch on the great gate leading into the Divorce Court courtyard at the west end of the Law Courts. When night has fallen and the eastern Strand is empty save for an occasional motor vehicle dizzily defying all urban speed limits, when all the air a solemn stillness holds and Street's dreaming pinnacles, piercing the upper darkness, whisper the last enchantments of Victorian gothic, you may, if you are lucky or persevering, notice that one of the great gates is slightly and unobtrusively ajar and that on it hangs a card marked "Concert" and, straining your ears, you may hear from the remote and murky recesses of the deserted building the faint sound of what Paul Jennings calls "twangling" music.

MUSIC IN THE GOTHIC NIGHT

IT was only quite recently that I happened to notice, one evening, this little crack in the dark and barricaded façade of the Palace of Justice. Around the courtyard within, the windows were all black but a distant gleam of light in the porch of the Divorce Court building beckoned me on. The trail led into the crypt and it was rather like wandering into one of those legendary magical caves deep in the mountains where life is suspended for ever. The great bare hall we see on working days as just a draughty corridor was transformed. Carpets concealed the stone floor; lights blazed overhead; chairs stood in ordered rows; at the far end there was all the

paraphernalia of an orchestra, music open, instruments laid down. But the place was empty. So was a small room beyond, full of hats and coats and violin cases. Through a gothic arch the great curving staircase up to the court floor led only into blackness. The vast echoing spaces were just like the palace of the Sleeping Beauty. The whole place was full of nothing but "otherness." Surely there must be some trail of light. Out in the porch again, one did lead into the main block, along the deserted drinking bar and into the deserted restaurant. A faint hum like a swarm of bees behind the closed door of the tea room provided the last clue and there, packed tight as a swarm, were musicians and audience buzzing over coffee and cakes dispensed by a bearded member of the Bar. This was the interval and soon they all returned through the enclosing shadows to crowd the Divorce Court crypt again and fill it with the sounds of Bach and Mozart and other newer composers.

THE CLUB

THIS is the Royal Courts of Justice Music Club, which at unpredictable intervals, it seems, converts these gothic shades to its own uses. It seems to be relatively little known among practitioners but well established with what one may call the civil service of the Law Courts. Since its revels by night in crypts and gothic vaults have so much in common with "the ghosts' high noon," ignorance of its activities may not be altogether unpardonable, though it operates under the high patronage of the Master of the Rolls and under the more direct control of Master William Pengelly. Not long ago it made a strangely improbable irruption into one of the newspapers with a report of a skiffle group experiment which it had initiated. This was illustrated with a most remarkable photograph. Down the curving Divorce Court staircase and through the gothic arch at the foot wound a strange and variegated procession. In the foreground stepped the Master, his violin under his chin and his bow held dramatically in his right hand. A step behind him was the black face of a West Indian with a double bass. Behind them descended girls and men with every conceivable sort of musical instrument, a cornet, a banjo, a pair of maraccas, a tambourine, a cork-filled milk bottle. In the picture it looked like a preliminary rehearsal for Walpurgis Night or like the start of one of those dancing fevers that used to sweep Europe in the Middle Ages. On this occasion there was performed the Master's own skiffle version of The Lord is My Shepherd, composed by himself. With such variety, embracing impartially Bach and skiffle, the club might well have a wide appeal. Such impartiality should appeal to the Bench and perhaps draw them in actively, away from their own private "otherness."

RICHARD ROE.

RENT ACT PROBLEMS

Readers are cordially invited to submit their problems, whether on the Rent Act, 1957, or on other subjects, to the "Points in Practice" Department, "The Solicitors' Journal," Oyez House, Breams Buildings, Fetter Lane, London, E.C.4, but the following points should be noted:

1. Questions can only be accepted from registered subscribers who are practising solicitors.

2. Questions should be brief, typewritten *in duplicate*, and should be accompanied by the sender's name and address *on a separate sheet*.

3. If a postal reply is desired, a stamped addressed envelope should be enclosed.

Schedule I—CERTIFICATE OF DISREPAIR GRANTED—DEDUCTION OF INCREASED RENT

Q. A client of ours is the tenant of a house of a gross value of £30 at a rent of 12s. 6d. per week. On 9th July, 1957, he was served with a notice increasing his rent as from 13th October, 1957, by 7s. 6d. per week and as from 13th April, 1958, by a further 3s. per week. The tenant pays rates. On 6th January last our client applied for a certificate of disrepair, which was granted by the local council on 11th February, and, in view of this, under para. 7 (1) of Sched. I to the Rent Act, the notice of increase ceased to have effect during such time as the certificate was in force. The certificate of disrepair is still in force and our client has paid no rent since 6th January last. He has now been asked to pay rent as from that date at the rate of 12s. 6d. per week. Under para. 7 (4) of Sched. I to the Rent Act, 1957, it appears that he is unable to deduct the excess rent as from the date when the notice of increase took effect, namely, 13th October. However, in "The Rent Act and You," Question and Answer No. 49, it is stated that the tenant in such a case can recover all the increase he has paid, and this is confirmed in Example C, which, however, relates to a default on an undertaking instead of a certificate of disrepair. Is our client entitled to deduct all the increased rent which has been paid or only from the date of his application for a certificate of disrepair?

A. A notice of increase served at any date later than six months before the application for a certificate of disrepair has no effect as respects a rental period beginning while the certificate is in force (Sched. I, para. 7 (1)). The certificate came into force on 11th February, 1958, and so the notice of increase does not affect rental periods beginning after that date. Further, by para. 7 (4) the tenant may withhold rent so that, in effect, he does not pay the increase for rental periods beginning after the date of the application—in this case 6th January, 1958. Apart from these provisions there is nothing in the Act to make irrecoverable an increase of rent payable before an application for a certificate of disrepair, and nothing to enable a tenant who has paid such an increase to recover it back. In our opinion, therefore, the tenant can only deduct increased rent paid in respect of rental periods beginning after 6th January, 1958. In any event the tenant would not be entitled to withhold all the rent (see *Peach* v. *Lowe* [1947] 1 All E.R. 441).

Form S—MISSTATEMENT OF RATEABLE VALUE—SIGNATURE

Q. A client of ours is a statutory tenant of premises in the London area, having a rateable value of £64 per annum. Her landlords have served upon her a notice to quit on Form S of Sched. IV to the Rent Restrictions Regulations, 1957, showing the rateable value of the premises as being £76, which is, of course, incorrect. The notice to quit is not signed but is stamped with a rubber stamp in block capitals (not a facsimile signature) by the agent, and we should be glad to have your opinion as to whether this notice is valid or otherwise.

A. The misstatement invalidates the notice. Form S is prescribed under the power conferred by the Rent, etc., Restrictions (Amendment) Act, 1933, s. 14, which authorises the prescribing of forms of notice of increase of rent, of notices in rent books, etc., and forms of application for

registration, as extended by the Rent Act, 1957, Sched. VI, para. 19, to notices, certificates and other documents, and includes power to require such notices, etc., to contain specified information. And Form S, being prescribed under the Rent Restrictions Regulations, 1957, para. 7 and Sched. IV, must state the rateable value. What is, we consider, important, is that the power to amend notices conferred by the Rent, etc., Restrictions Act, 1923, s. 6 (1), and the Rent Act, 1957, Sched. VI, para. 2, affects notices *of increase* only.

The rubber stamp "signature" would, if authority to affix it were proved, probably be held sufficient; but the point is to be considered an open one. The nearest authority is, we believe, to be found in the judgment of Evershed, M.R., in *Goodman* v. *J. Eban, Ltd.* [1954] 1 Q.B. 550 (which concerned the question of signature of a bill of costs: Solicitors Act, 1932), but *L.C.C.* v. *Agricultural Food Products, Ltd.* [1955] 2 Q.B. 218 warrants the proposition that the same reasoning would apply: see Parker, L.J.'s judgment. The learned Master of the Rolls, after stating that it was unnecessary for the purposes of the case to express any view whether the same result (that result being the upholding of a "facsimile" signature) would follow if the "signature" impressed by the stamp was not a facsimile representation of the solicitor's handwriting, but a mere typed or printed representation of his name or that of the firm, said that he would express no opinion on the question; but did go on to suggest that, in view of *R.* v. *Cowper* [1890] 24 Q.B.D. 531, such a non-facsimile rubber stamp impression might be held to suffice.

"THE SOLICITORS' JOURNAL," 24th APRIL, 1858

On the 24th April, 1858, THE SOLICITORS' JOURNAL commented on the Chancery Amendment Bill: "The whole tendency of modern improvements in judicial procedure has been to make each court complete in itself, without the aid of any supplementary jurisdiction; and the Bill introduced by the Solicitor-General is almost a necessary corollary of the Acts already in operation. Whether we are destined ever to arrive at the fusion of law and equity, which is the dream of those reformers who cannot endure an anomaly, it is not very important just now to inquire, because it is abundantly clear that such a consummation, if ever attained, will be reached by a series of gradual steps in advance, after the cautious fashion of all English reforms, and not by any sudden *coup-de-main*. The Solicitor-General's Bill is undoubtedly a step in this direction, like many other modifications of practice which have been introduced by recent statutes. Already the Courts of Common Law are endowed with nearly all the peculiar jurisdiction of Courts of Equity; they can listen to equitable pleas; they can interrogate defendants; and they are no longer debarred from exercising the right of granting injunctions and specific performance which formerly belonged to the Court of Chancery alone. So, too, the Equity Courts have acquired the right to examine witnesses *viva voce* and have ceased to send points of law to be decided on the other side of Westminster Hall. The great defect in their jurisdiction is the absence of any authority to award damages . . . There was a substantial reason for this when the Court of Chancery was unable to avail itself of the assistance of a jury to assess the amount of damage, and the Bill of the Solicitor-General is intended at once to enlarge the jurisdiction of the Court, and to remove the reason which justified the old restriction. Courts of Equity are to have authority in suits for specific performance or injunction to award damages to the plaintiff; and in order to enable them to exercise the power advantageously, they are empowered to summon juries . . . in the same way as is done on a trial at *nisi prius*."

BOOKS RECEIVED

Dicey's Conflict of Laws. Seventh Edition. Under the General Editorship of J. H. C. MORRIS, D.C.L. (Oxon). pp. cxxiv and (with Index) 1180. 1958. London: Stevens & Sons, Ltd. £6 6s. net.

Encyclopaedia of Housing Law and Practice. General Editor: PERCY LAMB, M.A., Q.C., of Gray's Inn and the Middle Temple. 1958. London: Sweet & Maxwell, Ltd. £7 7s. net (including service for 1958).

Hill and Redman's Law of Landlord and Tenant. Twelfth Edition. Second (Cumulative) Supplement. By W. J. WILLIAMS, B.A., of Lincoln's Inn, Barrister-at-Law, and Miss M. M. WELLS, M.A., of Gray's Inn, Barrister-at-Law. pp. xix and 157. 1958. London: Butterworth & Co. (Publishers), Ltd. 18s. 6d. net.

Prison Governor. By Major B. D. GREW, O.B.E. pp. (with Index) 220. 1958. London: Herbert Jenkins, Ltd. £1 1s. net.

The Definition of Law. By the late HERMANN KANTOROWICZ. Edited by A. H. CAMPBELL. pp. xxiv and (with Index) 113. 1958. London: Cambridge University Press. 15s. net.

The Problem of Divorce. By ROBERT S. W. POLLARD. pp. xiii and (with Index) 148. 1958. London: C. A. Watts & Co., Ltd. 12s. 6d. net.

Pease and Chitty's Law of Markets and Fairs. Second Edition. By HAROLD PARRISH, LL.B., of Lincoln's Inn, Barrister-at-Law. pp. xxxiii and (with Index) 261. 1958. London: Charles Knight & Co., Ltd. £2 2s. net.

H.M. LAND REGISTRY NOTICE

1. Further to relieve congestion in H.M. Land Registry, Lincoln's Inn Fields, the registers, filed plans and index maps relating to the Counties of Somerset, Devon and Cornwall and the City and County of Bristol are being removed to Government Buildings, Forest Road, Hawkenbury, Tunbridge Wells, Kent, on 5th May next, where as from that date the registration of title work arising from those areas will be done.

2. The Hawkenbury sub-office is already dealing with the work from the County Boroughs of Hastings, Eastbourne and Oxford and the Counties of Sussex, Hampshire, Berkshire, Dorset and Wiltshire, and it would be a great convenience if applications for registration, searches, etc., affecting titles in these areas and in those areas mentioned in para. 1 above could be sent there direct.

3. Personal searches of the registers and index maps may be made at Hawkenbury, but where it is desired to inspect these records in London they will be made available at Lincoln's Inn Fields at short notice.

4. The full address of the Hawkenbury Sub-Office is:—

H.M. Land Registry,
Government Buildings,
Forest Road,
Hawkenbury,
Tunbridge Wells,
Kent.

Telephone No.: Tunbridge Wells 2780/91.

H.M. Land Registry.
15th April, 1958.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Court of Appeal

DIVORCE: APPLICATION TO AMEND ANSWER BY ALLEGING ADULTERY BASED ON DISCRETION STATEMENT

Clear *v.* Clear

Hodson, Morris and Pearce, L.JJ. 27th February, 1958

Appeal from Mr. Commissioner Blanco White.

A wife, who petitioned for divorce on ground of cruelty, filed a discretion statement admitting adultery. The husband had answered the petition by denying cruelty and alleging that the wife had herself been guilty of cruelty. During the trial of the petition, and before the wife had given evidence admitting adultery, the husband applied for an adjournment of the hearing to amend his answer by alleging adultery by the wife and to serve notice on the alleged co-respondent while he was still within the jurisdiction. The application was refused by the judge, who ultimately dismissed the husband's plea of cruelty and, exercising his discretion in favour of the wife, granted her a decree on the ground of cruelty. The husband appealed.

HODSON, L.J., said that he was not prepared to say that in every case where the parties come to trial, one knowing nothing of the circumstances in which the other side is asking for discretion, and finding the evidence for the first time at the hearing, leave to amend must be given *ex debito justitiae*. It was true the courts had gone a long way in civil actions in saying that leave to amend would always be granted where injustice would not thereby be done, and where any injustice which was temporarily done could be remedied by costs, but it must always be remembered that there was a discretion to be exercised judicially in this case, and in this matrimonial jurisdiction very often the exercise of the discretion was peculiarly difficult. It would be wrong to say that, where a party had merely lain by and waited, so to speak, for the evidence to fall into his or her lap at the trial, the amendment must necessarily be given. One had to remember that the parties were not entirely helpless in these matters. They were told, when the petition was served on them by the other side, that discretion was being asked for notwithstanding the adultery committed. If they wanted to raise the issue of adultery as a live issue and fight it, and not merely accept the finding of adultery which they were reasonably sure they would get against the other side at the hearing, if they wanted proof of it themselves it was, *prima facie*, incumbent on them to take steps so to obtain proof. Leave ought not to be given to amend in this case so as to enable the husband, at this late hour, to make a positive charge of adultery against his wife.

MORRIS, L.J., delivered a judgment to the same effect.

PEARCE, L.J., agreed. Appeal dismissed.

APPEARANCES: *K. Bruce Campbell* and *Elaine Jones* (*Marcy & Co.*); *Ifor Lloyd*, Q.C., *Victor Russell* and *C. H. Beaumont* (*Shield & Son*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 467**

MINES AND MINERALS: BREACH OF STATUTORY DUTY: WHETHER COAL-FACE A "SIDE"

Gough *v.* National Coal Board

Lord Goddard, C.J., Morris, L.J., and McNair, J.

28th February, 1958

Appeal from Salmon, J.

The plaintiff was employed as a ripper by the defendants in their coal-mine at a coal-face which was being worked on the "long wall" system, the face being about 150 yards long and about 6 feet high. While the plaintiff was walking along the coal-face a large piece of coal came away from the top of the face, striking and injuring the plaintiff. The plaintiff brought an action for damages against the defendants, alleging that the defendants were in breach of their statutory duty under s. 49 of the Coal Mines Act, 1911, in that they had failed to make secure the roof and sides of every travelling road and working place, and had caused the plaintiff to walk along the coal-face at a time when the face had not been made secure. Section 49 of the Coal Mines Act, 1911, provides that "The roof and sides of every travelling road and working place shall be made secure, and a person shall not, unless appointed for the purpose of exploring or repairing, travel on or work in any travelling road or working place which is not so made secure." It was admitted by the defendants that the place where the incident had occurred was a "working place" within the meaning of s. 49 of the Act. Salmon, J., gave judgment for the defendants. The plaintiff appealed.

MCNAIR, J., said that it seemed to him to be wholly unrealistic and artificial to say that, when a man was employed to bring down a face of coal in front of him, that face of coal was the side of a working place which had to be made secure, when the whole object of the operation was to make it insecure. His lordship would dismiss the appeal.

LORD GODDARD, C.J., said that he agreed with the judgment of McNair, J., and would dismiss this appeal. His lordship observed that the question before the court had not hitherto been the subject of a decision by an appellate court, either in England or Scotland. His lordship could not think that the coal-face which was being worked could properly be described as the side of the working place.

MORRIS, L.J., dissenting, said that in his judgment the section applied to every working place. The section was imperative. It created an absolute obligation. His lordship saw no warrant for reading into the section any words of exclusion. In his judgment it would have been strange if the section had been inapplicable to cover the place where the need to achieve security was most marked. The section was in that Part of the Coal Mines Act, 1911, which contained provisions as to safety. His lordship said that he thought that it was important to have in mind that the obligation was that the roof and sides of a working place "shall be made secure." This language involved that there was a state of insecurity that demanded attention. The obligation was not to keep secure. Such an obligation might well have been impossible of fulfilment in the course of coal mining operations. The very nature of coal mining brought it about that, in the process of removing coal from its resting place, there would be a withdrawal of support with consequential temporary instability and insecurity. But, in the interests of safety, the risks had to be minimised and, accordingly, there was an absolute duty to make secure. His lordship would have allowed the appeal. Appeal dismissed. Leave to appeal to the House of Lords granted.

APPEARANCES: *Gerald Gardiner*, Q.C., *A. E. James* and *I. J. Black* (*Stafford Clark & Co.*, for *Hooper & Fairbairn*, Dudley); *John Thompson*, Q.C., and *G. K. Mynett* (*F. W. Dawson*, Dudley).

[Reported by DAVID CALCUTT, Esq., Barrister-at-Law] **[2 W.L.R. 735**

DIVORCE: DISCRETION: ADMISSIBILITY OF QUESTIONS ON ADULTERY: PRACTICE ON LEAVE TO AMEND

Lewis *v.* Lewis

Hodson and Pearce, L.JJ. 11th March, 1958

Interlocutory appeal from Sir Harry Trusted, sitting as commissioner in divorce.

A husband, who had parted from his wife in April, 1954, presented a petition for divorce on the ground of her alleged cruelty, and by his prayer asked for the court's discretion to be exercised in his favour in respect of his own adultery. By her answer the wife prayed for a divorce, charging her husband with cruelty; and her particulars included a charge of cruelty on an occasion when she had accused him of philandering with other women shortly before they separated. At the hearing the husband did not give evidence of his own adultery during his examination in chief, nor was his discretion statement put before the court; but in cross-examination he was asked whether he had committed adultery, and he replied Yes. Objection was taken to that question; but leave was thereupon sought by the

wife to amend her answer by adding a charge of adultery "on some day or days unknown, save that it was after April, 1954, at a place or places unknown . . . with a woman or women whose name or names are unknown." The commissioner granted the wife leave to amend, but gave leave to appeal from that decision, and adjourned his decision on the issues raised in the suit.

HODSON, L.J., said the view that witnesses could claim protection against questions on adultery as incriminating was obsolete; nor did the express statutory provision in s. 32 (3) of the Matrimonial Causes Act, 1950, apply to protect this petitioner, since these were not proceedings "instituted in consequence of adultery." The question in this case was rightly admitted by the commissioner. On the objection that leave should not have been given to allege adultery based on the husband's general admission, the court had said recently that where in suits for divorce a party had given evidence of adultery following on no allegation of adultery but only a prayer indicating that discretion would be sought, leave to amend would not be given as of right; but it was generally more convenient to give such leave provided that no injustice would thereby be done to the parties. There was no substance in the objection that the form of amendment here was too vague, for it was based on the husband's sworn admission and not merely on the prayer to his petition. The main contention had been that it was the duty of the court, where discretion was asked for, to deal with the whole case as pleaded and dispose of it by findings before considering the question of discretion. His lordship could not lend any support to the contention that that was a practice which, if it had ever been followed, ought to be followed. In the ordinary case where discretion was sought, the convenient course was for a party to be asked to deal with the fact of his or her adultery in his evidence-in-chief in its chronological place. In a matrimonial cause, particularly where charges of cruelty were made, the fact of adultery was part of the human story which the court had to investigate; and it would be absurd to ask the court to arrive at any decision on the cruelty without considering the adultery of the other party. The commissioner had rightly allowed the amendment and the appeal should be dismissed.

PEARCE, L.J., concurring, said that there was no rule of practice entitling a petitioner to defer giving evidence of his own adultery until the judge had given judgment on the issues on the pleadings, nor would such a practice be reasonable or desirable. Even concealed adultery was likely to have a serious effect on the relations between husband and wife. It was important that the matter should be fully known to the judge when he was deciding the issues between the parties, and it would be wrong to allow one of the parties to deprive him of that knowledge. Appeal dismissed.

APPEARANCES: *H. B. D. Grazebrook*, Q.C., and *W. R. K. Merrylees* (*W. H. Matthews & Co.*); *Neil McKinnon*, Q.C., and *P. G. Langdon-Davies* (*Seeley & Co.*, for *L. C. Thomas & Son*, Neath, Glam.).

[Reported by Miss M. M. HILL, Barrister-at-Law] [2 W.L.R. 747

NEGLIGENCE: SHUNTER RIDING ON ENGINE: INJURED BY POINTS LEVER

Hicks *v.* British Transport Commission

Lord Evershed, M.R., Parker and Sellers, L.JJ.

12th March, 1958

Appeal from Havers, J.

A shunter employed by the defendant commission was riding on the bottom step of a locomotive travelling between a station and a nearby signal box when, apparently, he came into contact with a vertical points lever and fell off the locomotive. No one saw the man fall. The train went over his legs and he was seriously injured. The lever, which it was conceded that he struck, was about 3 feet high. It had been placed between the railway line and a spur line leading to sidings about one month before the accident happened. It was not exactly equidistant between the two lines but was closer to the railway line than the spur and the clearance between the steps of a passing locomotive and the lever was not more than 8 inches. The lever was painted white and the accident happened on a clear day about midday. It was notorious that shunters doing the sort of job that the injured plaintiff did habitually rode on the steps of the locomotives, and the practice was tolerated by the defendants, with few exceptions where the circumstances were unusually dangerous. The line where the accident happened was used by only one train each day from Monday to Friday. The plaintiff had made the journey on a number of occasions since the lever was installed. He knew the risks of riding on the step past the lever but it was found that on that particular day he did not see the lever. In proceedings brought against the defendants the plaintiff claimed that they were in breach of the statutory duty imposed by para. 5 of the Prevention of Accidents Rules, 1902, and also that they were guilty of common-law negligence. Paragraph 5 requires, *inter alia*, that ground levers working points should be so sited that men working them were clear of adjacent lines, and sited in a position "parallel to adjacent lines, or in such other position and be of such form, as to cause as little obstruction as possible" to railway employees.

LORD EVERSHED, M.R., said that on the facts the lever was placed in a position parallel to the adjacent lines and that that sufficed to satisfy the statutory duty imposed on the defendants towards the plaintiff, who was not a person engaged in working that lever; that on the construction of para. 5 of the rules the requirement that the siting should be such as to minimize obstruction to railway employees was alternative to the first requirement and did not, therefore, have to be considered. On the issue of common-law negligence, his lordship said that, although no one saw exactly how the accident was caused, there was evidence to support the finding of the judge that on a reasonable balance of probabilities the defendants had been negligent, for they knew that shunters were in the habit of riding on the locomotive steps and they should have foreseen that with so meagre a clearance there was a risk of injury and they should have, but had not, considered safety precautions. The plaintiff had, however, been guilty of negligence which, in his lordship's view, had contributed equally to the causation of the accident, for the evidence established that he knew the risks involved in riding on the step because of the unusual siting of the lever and he was, therefore, under a strong obligation to take care of himself. He had made the journey on other occasions but on this occasion, apparently through some inadvertence, he failed to see the lever.

PARKER, L.J., agreeing, said that it was a question of degree whether inadvertence amounted in a particular case to negligence. The judge had apparently been influenced in reaching a conclusion that the plaintiff had not been guilty of contributory negligence by passages in *Caswell* v. *Powell Duffryn Associated Collieries, Ltd.* [1940] A.C. 152; *Staveley Iron and Chemical Co., Ltd.* v. *Jones* [1956] A.C. 627; and *Hutchinson* v. *London and North Eastern Railway Co.* [1942] 1 K.B. 481. Those were cases where the working conditions might explain inadvertence, but here the plaintiff was riding for his own convenience on the step and had nothing to do at that time except to look after his own safety in accordance with the injunction in the commission's rules.

SELLERS, L.J., agreed. Appeal allowed on issues as to breach of statutory duty and contributory negligence.

APPEARANCES: *Marven Everett*, Q.C., and *H. Tudor Evans* (*M. H. B. Gilmour*); *N. R. Fox-Andrews*, Q.C., *W. G. Wingate* and *Norman Irvine* (*Pattinson & Brewer*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 493

Probate, Divorce and Admiralty Division

DIVORCE: AMENDMENT OF PETITION AT TRIAL TO ADD CHARGE OF ADULTERY BASED ON DISCRETION STATEMENT

Clueit *v.* Clueit

Davies, J. 19th December, 1957

Petition by wife for divorce on the ground of desertion.

The wife having petitioned for divorce on the ground of desertion, the husband by his answer denied his wife's allegation and cross-prayed for relief on the ground of the wife's alleged desertion. The husband's answer also prayed the exercise of the court's discretion in his favour notwithstanding his own adultery, concerning which the wife had, until the filing of the answer, been in ignorance. Upon the discretion statement being put in as evidence at the conclusion of the husband's evidence, counsel for the wife applied for leave to amend the petition in order to include an allegation of adultery by the husband with the woman named in his discretion statement.

DAVIES, J., said that if he were to come to the view that neither party was in desertion of the other, then there would be nothing

to prevent another petition being filed by the wife alleging adultery based on the information contained in the discretion statement. Therefore, to provide against that possibility, it was right and proper to give the wife leave to amend now, because there would be a great saving of expense for this application to be made and granted in the present suit rather than to go to the expense of bringing a separate petition.

APPEARANCES: *P. J. Cox* (*H. B. Keight & Co.*, Birmingham); *F. Blennerhassett* (*Philip Baker & Co.*, Birmingham).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [1 W.L.R. 463

HUSBAND AND WIFE: JUSTICES: MAINTENANCE: JURISDICTION: ORDER REVOKED WITHOUT COMPLAINT TO REVOKE: POSSIBILITY OF REVIVER OF PROPERLY REVOKED ORDER

Bowen *v.* Bowen

Lord Merriman, P., and Wrangham, J. 5th February, 1958

Appeal by wife from the revocation by the justices for the Hereford petty sessional division of Hereford of an order of the justices for her maintenance upon cross-applications, initiated by the husband, to vary the order.

The parties were married in 1950. In May, 1952, the justices for the Hereford petty sessional division of Hereford granted the wife an order for £2 a week on the ground of wilful neglect to provide her with reasonable maintenance. In May, 1957, the marriage was dissolved by decree absolute on the ground of the husband's adultery; but the wife continued to rely upon the justices' order for maintenance. A summons was issued on 3rd October, 1957, upon the complaint of the husband made on 27th September, 1957, whereby he asked that the order be varied by a reduction in the amount payable upon the grounds that his means were reduced and that the wife's means were sufficient "without the weekly sum of £2 or a large part thereof," and that the marriage had been dissolved. The wife replied by asking for the order to be increased. On 12th October, 1957, the justices rejected the wife's complaint and upon the husband's complaint for variation made an order that the order of May, 1952, be revoked.

LORD MERRIMAN, P., applying *Trathan* v. *Trathan* [1955] 1 W.L.R. 805, held that the justices had no jurisdiction, upon an application to have an order varied, to revoke it. Referring to a submission that the order had not really been revoked, since it might be revived, his lordship referred to *Pratt* v. *Pratt* (1927), 43 T.L.R. 523, and *Markham* v. *Markham* (1946), 63 T.L.R. 91, and said that it might be that there were cases where reviver could be proper, as, for instance, where an order of the justices had "ceased to have effect" because the parties had temporarily resumed cohabitation. The courts would further have to decide whether a wife might apply (upon fresh evidence) for an order to be revived after it had been "discharged" or "revoked" (between which words there was no difference).

WRANGHAM, J., concurred. Appeal against revocation allowed and nominal order substituted.

APPEARANCES: *A. T. Hoolahan* (*Kinch & Richardson*, for *T. A. Matthews & Co.*, Hereford); *P. E. Underwood* (*Corner and Wadsworth*, Hereford).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [1 W.L.R. 508

DIVORCE: CONDONATION: COHABITATION: WHETHER WITH REQUISITE KNOWLEDGE OF ALL MATERIAL FACTS

Burch *v.* Burch

Sachs, J. 10th March, 1958

Defended petition.

From at the latest March, 1950, a husband, without being aware of any facts on which he could found a reasonable belief in his wife's adultery, nourished a convinced belief that she had committed adultery with a United States soldier in or about March, 1946, and that a child which had, in fact, been conceived prior to the association was the result of the suspected adultery. The husband continued to live with the wife in all respects as husband and wife except that in 1952 sexual intercourse between the parties ceased. In April, 1956, the wife confessed that she had committed one act of adultery in or about January, 1945, with a Canadian airman shortly before her association with the American soldier, which was innocent. The husband consulted a solicitor and pursued inquiries as to the wife's confession and, in August, 1956, he left the matrimonial home and filed a petition seeking a divorce on the ground of his wife's admitted adultery. The wife by her answer alleged that the adultery had been condoned.

SACHS, J., reading his judgment, found that between February, 1946, and the date of the wife's confession the husband had no evidence on which he could institute proceedings for divorce and he had no reasonable grounds for believing in the wife's adultery derived either from her own conduct or from any other source. His suspicions had, however, crystallised into a convinced belief that the wife had committed adultery with the United States soldier, not with the Canadian airman, and at all times thereafter he would, in all probability, have sought a divorce had he secured evidence of the guilt of the wife, who probably feared that such was the case. Save in one set of circumstances "knowledge" of the wife's offence was essential before a husband could condone. His lordship referred to the authorities which emphasised the necessity of such knowledge. The exception was that of a husband who continued in matrimonial cohabitation without caring whether his suspicions were true or false (*Keats* v. *Keats and Montezuma* (1859), 1 Sw. & Tr. 334). As a matter of first impression it seemed that a conclusion based on intuition, delusion, jealous obsession, or any other method than reasonable deduction from ascertained facts, did not constitute knowledge. Ingrained suspicion did not become knowledge merely because the man who held it became convinced of its truth without proper supporting evidence. *Allen* v. *Allen* [1951] 1 All E.R. 724, 731 and *D'Aguilar* v. *D'Aguilar* (1794), 1 Hag. Ecc. 773, confirmed that impression. Condonation being an absolute bar to a husband's right on securing evidence to be granted relief, it was obvious that a court would not lightly hold the bar to have been applied at a moment when from a practical angle, having regard to the absence of evidence, he neither had that right nor had any wish to forgo it. It was not, however, in the present case, necessary to decide whether in order to impute knowledge to a spouse it must of necessity always be shown that he or she had evidence fit to be laid before a court. In the present case the husband was not aware of any facts on which a reasonable husband could ground a belief in his wife's adultery, and whilst belief was generally an essential ingredient in the knowledge required for condonation (*Ellis* v. *Ellis* (1865), 4 Sw. & Tr. 154), belief of itself did not constitute such knowledge. Mere suspicion that grew to conviction was no different from suspicion that did not lead to that result. For these reasons the husband could not be held to have had knowledge of his wife's adultery before the confession. There was a further reason why the husband could not be held to have had the requisite knowledge. The facts which he believed did not constitute all the material facts. What facts were material—or what were the facts of which the spouse must be "substantially aware"—must necessarily depend on the circumstances of the particular case and were not always easy to determine. *Prima facie*, any fact was material which would be so taken by a reasonable man. In addition any fact was material which the offending party knew would be so regarded by the innocent spouse. For this husband there would, as his wife well knew, have been a considerably added distress in finding that there had been two men in her life at the relevant period—and not merely the one of whom she had told him. This added distress would undoubtedly have weighed in the scales with him, even if he could, at the vital moment, have approached the matter on the footing that the association with the United States soldier was innocent. Accordingly, the identity of the adulterer was material. It being thus established that before the wife's confession the husband had no knowledge of her guilt, she could not assert that there was condonation unless it could be shown that the principle laid down in *Keats* v. *Keats and Montezuma*, *supra*, applied. Suffice it to say that the husband neither stated nor felt that he "did not care": the wife was never led to believe he did not care—indeed, she knew that he did care: and there was thus no express or implied forgiveness—either in the conversational sense or within the special meaning of that word. There was thus no condonation of the type under consideration. Since it had been affirmatively shown that the husband had not condoned his wife's adultery, his petition must succeed. Decree *nisi*.

APPEARANCES: *Guy Willett* (*Blundell, Baker & Co.*, for *Clement J. Collard*, Bournemouth); *Robert Hughes* (*Batchelor, Fry, Coulson & Burder*, for *F. J. M. Gale & Co.*, Bournemouth); *Roger Ormrod* (*The Queen's Proctor*).

[Reported by Miss ELAINE JONES, Barrister-at-Law] **[1 W.L.R. 480**

Court of Criminal Appeal

MURDER: DIMINISHED RESPONSIBILITY: MEDICAL EVIDENCE AS TO ABNORMALITY OF MIND UNCHALLENGED

R. *v.* Matheson

Lord Goddard, C.J., Streatfeild, Slade, Donovan and Havers, JJ.
1st April, 1958

Appeal against conviction.

At the trial of the appellant, a practising sodomite, for the capital murder of a fifteen-year-old boy, the main defence raised was that the appellant (who admitted killing the boy by hitting him with a bottle and a claw hammer and subsequently mutilating the body) was suffering from diminished responsibility as defined by s. 2 (1) of the Homicide Act, 1957, and was accordingly guilty of manslaughter and not of murder. Three doctors who gave evidence on his behalf were of the unanimous opinion that the appellant was suffering from such an abnormality of mind, due to arrested or retarded development, as substantially to impair his mental responsibility. The prosecution did not challenge that opinion and called no medical evidence in rebuttal. The jury convicted of capital murder. The appellant appealed against conviction, on the ground *inter alia* that the verdict, in not giving effect to the defence of diminished responsibility, was unreasonable and not supported by the evidence. The appeal was first heard on 10th March before Streatfeild, Slade and Havers, JJ., but at the conclusion of the argument on the issue of diminished responsibility it was adjourned for hearing by a court of five judges. At the rehearing on 24th March a court of five judges, at the conclusion of the argument on diminished responsibility, allowed the appeal, substituted a verdict of manslaughter for that of murder and a sentence of twenty years' imprisonment for the capital sentence. The court reserved the reasons for its decision, giving them on 1st April.

LORD GODDARD, C.J., reading the judgment of the court, said that on the issue of diminished responsibility none of the facts were disputed. The three medical men called for the defence, the senior prison medical officer and two consultant psychiatrists, had agreed that the appellant was not insane within the McNaghten Rules but were all satisfied that his mind was so abnormal as substantially to impair his mental responsibility. The prosecution did not challenge the opinions they had formed. The evidence of those three witnesses was clearly enough to shift the burden of proof thrown on the defence by s. 2 of the Homicide Act, yet no medical evidence was given by the prosecution in rebuttal. While it had often been emphasised that the decision in these cases, as in those in which insanity was pleaded, was for the jury and not for the doctors, the verdict must be founded on evidence. If there were facts which would entitle a jury to reject or differ from the opinions of the medical men, the court would not, and, indeed, could not, disturb their verdict, but if the doctors' evidence was unchallenged and there was no other on the issue, a verdict contrary to their opinion would not be "a true verdict in accordance with the evidence." Here it had been said that there was evidence of premeditation and undoubtedly there was, but an abnormal mind was as capable of forming an intention and desire to kill as one that was normal. The revolting nature of the crime would cause most people to say that it was the work of a maniac and the court would well understand that a jury would think that such a creature as the appellant ought not to live and that a verdict involving a capital sentence was the only one appropriate. But Parliament had altered the law and decreed that if a killing was committed by a person whose abnormal mind had seriously diminished his responsibility the verdict was to be manslaughter and not murder. If there was unchallenged evidence that there was abnormality of mind and consequent substantial impairment of mental responsibility and no facts or circumstances appeared that could displace or throw doubt on that evidence, the court was bound to say that a verdict of murder was unsupported by the evidence. The fact was that here there was unchallenged evidence that the appellant was within the provisions of s. 2 of the Homicide Act, 1957, and no evidence that he was not. The decision therefore in no way departed from what had been said in other cases that the decision was for the jury and not for the doctors; it only emphasised that a verdict must be supported by evidence. The evidence in this particular case did not support the conviction. This was an opportunity for laying down a rule of practice in cases where the defence of diminished responsibility was raised. The judges of the court had resolved that a plea of guilty to manslaughter on this ground should not be accepted, though it might be in Scotland (*Kirkwood* v. *Lord Advocate* [1939] S.C. (J.) 36). The issue must be left to the jury, just as it must be if the defence was insanity. It might happen that on an indictment for murder the defence might ask for a verdict of manslaughter on the ground of diminished responsibility and also on some other ground such as provocation. If the jury returned a verdict of manslaughter the judge might, and generally should, then ask them whether their verdict was based on diminished responsibility or on the other ground or on both.

APPEARANCES: *George Waller*, Q.C., and *Peter Taylor* (*Registrar, Court of Criminal Appeal*); *P. Stanley-Price*, Q.C., and *R. Rawden-Smith* (*Director of Public Prosecutions*).

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law] **[1 W.L.R. 474**

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Christmas Island Bill [H.L.] [17th April.

To enable Her Majesty to place Christmas Island under the authority of the Commonwealth of Australia, and for purposes connected therewith.

Essex County Council Bill [H.C.] [16th April.
House of Commons (Redistribution of Seats) Bill [H.C.] [15th April.

Read Second Time:—

Land Drainage (Scotland) Bill [H.C.] [17th April.
Maintenance Orders Bill [H.C.] [16th April.
National Health Service Contributions Bill [H.C.] [15th April.
University of Leicester Bill [H.C.] [16th April.

Read Third Time:—

Milford Haven Conservancy Bill [H.C.] [17th April.

In Committee:—

Road Transport Lighting (Amendment) Bill [H.C.] [16th April.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Landlord and Tenant (Temporary Provisions) Bill [H.C.] [16th April.

To prohibit the recovery of possession, except by legal proceedings, of certain dwelling-houses released from control by subsection (1) of section eleven of the Rent Act, 1957, and to provide in certain cases for suspending for a limited period the execution of any order made in such proceedings; to regulate the terms and conditions as to rent and other matters to be applied in cases where possession of such dwelling-houses is retained pending the recovery of possession; and for purposes connected with the matters aforesaid.

Read Second Time:—

Industrial Assurance and Friendly Societies Act, 1948 (Amendment) Bill [H.C.] [18th April.

Wallasey Corporation Bill [H.C.] [15th April.

Read Third Time:—

Divorce (Insanity and Desertion) Bill [H.C.] [18th April.
Marriage Acts Amendment Bill [H.C.] [18th April.
Opticians Bill [H.C.] [18th April.
Variation of Trusts Bill [H.C.] [18th April.

B. Questions

Judicature Act and Rules of Court (Council)

The Solicitor-General said that the Council of Judges last met on 9th April, 1952. Arrangements had been made, with the approval of the Supreme Court Rule Committee, for the revision of the rules to be undertaken in the Consolidation Branch of the Office of Parliamentary Counsel, and this work was now in progress. [13th April.

Pedestrian Crossings Regulations, 1954

The Solicitor-General said that the Lord Chancellor did not consider that legislation was necessary (because of the decision in *Barsett* v. *Victoria Wine Co.*, *The Times*, 6th February, 1958) to enable a person to base a claim for damages for personal injury upon a breach of the Pedestrian Crossings Regulations, 1954. That case was based on common-law negligence only, and the decision of the Court of Appeal did not seem to cast any doubt on the correctness of previous decisions about claims based on the regulations. [15th April.

Cheques Act, 1957

Mr. J. E. S. Simon said that payable orders drawn on the Postmaster-General were within the scope of s. 4 of the Act, but that section had no bearing on the requirement that the payee must give an effective discharge by signing such orders. The matter was being kept under review. [17th April.

STATUTORY INSTRUMENTS

British Protectorates, Protected States and Protected Persons (Amendment No. 2) Order in Council, 1958. (S.I. 1958 No. 590.) 5d.

Central Banks (Income Tax Schedule C Exemption) Order, 1958. (S.I. 1958 No. 598.) 5d.

Farm Improvements (Standard Costs) Regulations, 1958. (S.I. 1958 No. 627.) 8d.

Foreign Compensation (Hungary) Order, 1958. (S.I. 1958 No. 594.) 9d.

Foreign Compensation (Poland) (Debts) Amendment Order, 1958. (S.I. 1958 No. 593.) 5d.

Foreign Compensation (Poland) (Nationalisation Claims) (Amendment) Order, 1958. (S.I. 1958 No. 595.) 5d.

Grimsby, Cleethorpes and District Water Board (Weelsby Pumping Station) Order, 1958. (S.I. 1958 No. 587.) 6d.

Import Duties (Exemptions) (No. 6) Order, 1958. (S.I. 1958 No. 613.) 5d.

Imported Livestock (Marking) (Revocation) Order, 1958. (S.I. 1958 No. 616.) 4d.

Judicial Committee (Dentists Rules) Order, 1958. (S.I. 1958 No. 599.) 5d.

Leeward Islands (Emergency Powers) Order in Council, 1958. (S.I. 1958 No. 591.) 5d.

Merchant Shipping (Life-Saving Appliances) Rules, 1958. (S.I. 1958 No. 602.) 2s. 4d.

National Insurance and Industrial Injuries (France) Order, 1958. (S.I. 1958 No. 597.) 10d.

Northamptonshire (New Streets) Order, 1958. (S.I. 1958 No. 622.) 4d.

Nurses (Scotland) (Amendment) Rules, 1958, Approval Instrument, 1958. (S.I. 1958 No. 586 (S. 27).) 5d.

Police Pensions (No. 2) Regulations, 1958. (S.I. 1958 No. 605.) 6d.

Retention of Railways across Highways (County of Warwick) (No. 1) Order, 1958. (S.I. 1958 No. 577.) 5d.

Stopping up of Highways (County of Devon) (No. 2) Order, 1958. (S.I. 1958 No. 579.) 5d.

Stopping up of Highways (County of Essex) (No. 5) Order, 1958. (S.I. 1958 No. 576.) 5d.

Stopping up of Highways (County of Essex) (No. 6) Order, 1958. (S.I. 1958 No. 584.) 5d.

Stopping up of Highways (County of Gloucester) (No. 5) Order, 1958. (S.I. 1958 No. 580.) 5d.

Stopping up of Highways (County of Gloucester) (No. 6) Order, 1958. (S.I. 1958 No. 610.) 5d.

Stopping up of Highways (London) (No. 14) Order, 1958. (S.I. 1958 No. 606.) 5d.

Stopping up of Highways (County of Nottingham) (No. 3) Order, 1958. (S.I. 1958 No. 578.) 5d.

Stopping up of Highways (County of Nottingham) (No. 4) Order, 1958. (S.I. 1958 No. 611.) 5d.

Stopping up of Highways (County of Sussex, East) (No. 3) Order, 1958. (S.I. 1958 No. 603.) 5d.

Tanganyika (Legislative Council) (Amendment) Order in Council, 1958. (S.I. 1958 No. 592.) 5d.

Therapeutic Substances (Supply of Streptomycin and Oxytetracycline for Horticultural Purposes) Regulations, 1958. (S.I. 1958 No. 614.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., Oyez House, Breams Buildings, Fetter Lane, London, E.C.4, Prices stated are inclusive of postage.]

PRACTICE NOTE

COMPANIES COURT

The attention of practitioners is called to the Companies (Winding-up) (Amendment) Rules, 1957 (S.I. 1957 No. 973), para. 1 (*f*), which provided for the omission of the name of the Judge in the general title in all proceedings in the High Court in the winding up of a company under the Companies Act, 1948, or under s. 210 of that Act.

It should also be noted that in accordance with Ord. 5, r. 9, of the Rules of the Supreme Court, 1883, all applications under the Companies Act, 1948, brought to or issued out of the office of the Registrar, Companies Court, pursuant to Ord. 53B are assigned to Group A and the general title in all such matters where the company is not in liquidation should include after the words "Chancery Division" the word and letter "Group A."

By direction of the Judge.

Maurice Berkeley,
31st March, 1958. Registrar.

GATESHEAD AND NEWCASTLE RENT TRIBUNALS

The existing rent tribunal at Gateshead has been closed and the tribunal amalgamated with the Newcastle Tribunal. The office of the new tribunal will be at Clarendon House, Clayton Street, Newcastle-on-Tyne, 1: telephone number Newcastle 27550.

SHEFFIELD AND DONCASTER RENT TRIBUNALS

The existing rent tribunal at Doncaster has been closed and the tribunal amalgamated with the Sheffield Tribunal. The office of the new tribunal will be at the 2nd Floor, White Buildings, Fitzalan Square, Sheffield: telephone number Sheffield 25555.

NOTES AND NEWS

Honours and Appointments

Mr. PETER STEWART ROSS, solicitor, of Blyth, Northumberland, has been appointed assistant prosecuting solicitor for the police at Middlesbrough Magistrates' Court, with effect from the beginning of June.

Personal Notes

Colonel James Douglas Porter, solicitor, of Conway, Caernarvonshire, was elected People's Warden at the Easter Vestry of St. Mary's Church, Conway, for the twenty-first successive year.

Mr. Ernest Willis, solicitor, of Leyburn, Yorks, was married recently at Redmire to Miss Margaret Shields.

Miscellaneous

DEVELOPMENT PLANS

ADMINISTRATIVE COUNTY OF LONDON DEVELOPMENT PLAN

On 14th March, 1958, the Minister of Housing and Local Government amended the above development plan. A certified copy of the plan as amended by the Minister has been deposited at The County Hall, Westminster Bridge, S.E.1 (Room 314A) and certified copies of the plan as amended or certified extracts thereof so far as the amendment relates to the Metropolitan Borough of Chelsea (in the area Manresa Road—Dovehouse Street) have also been deposited at Chelsea Town Hall, King's Road, S.W.3. The copies or extracts of the plan so deposited will be open for inspection free of charge by all persons interested between the hours of 10 a.m. and 4 p.m., Monday to Friday, 10 a.m and 12 noon Saturday. The amendment became operative as from 11th April, 1958, but if any person aggrieved by it desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation make thereunder has not been complied with in relation to the making of the amendment, he may, within six weeks from 11th April, 1958, make application to the High Court.

COUNTY BOROUGH OF NEWPORT DEVELOPMENT PLAN

On 14th March, 1958, the Minister of Housing and Local Government approved (with modifications) the above development plan. A certified copy of the plan as approved by the Minister has been deposited at the Borough Engineer's Department, Civic Centre, Newport, Mon. The copy of the plan so deposited will be open for inspection, free of charge, by all persons interested between 9 a.m. and 1 p.m., and 2.30 p.m. and 5.30 p.m. (Saturdays 9 a.m. to 12.15 p.m.). The plan became operative as from 15th April, 1958, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any Regulation made thereunder has not been complied with in relation to the approval of the plan, he may within six weeks from 15th April, 1958, make application to the High Court.

COUNTY OF CORNWALL DEVELOPMENT PLAN

Proposals for alterations or additions to the above development plan, which were on 17th October, 1957, submitted to the Minister of Housing and Local Government, have been withdrawn and re-submitted with a revised Designation Map and revised paragraphs in the Written Statement relating to (*a*) the proposed designation of land as subject to compulsory acquisition, whereby the powers under which the land is designated have been altered, and the area in question has been extended, and (*b*) other minor amendments. The proposals relate to land situate within the Urban District of St. Austell, the area being more particularly described in the Schedule hereto. Certified copies of the proposals as re-submitted have been deposited at the County Hall, Truro, and at the Urban District Council Offices, St. Austell, and are available for inspection during normal office hours, free of charge, by all persons interested. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, the Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 15th May, 1958, and any such objection or representation should state the grounds on which it is made. Persons making any objection or representation may register their names and addresses with the Cornwall County Council, County Hall, Truro, and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals. The Minister has intimated that objections or representations which may have been made to him in respect of the submission of 17th October, 1957, need not be repeated and that he will treat them as having been made to the proposals for alterations or additions advertised in this notice.

THE SCHEDULE

An area of approximately 9·5 acres bounded on the north by West Hill and Fore Street, on the north-east by Vicarage Hill and Duke Street, on the south-east by South Street and on the south-west by the existing road leading to the Odeon Cinema Car Park and the eastern boundary of the County Secondary School.

COUNTY OF CORNWALL DEVELOPMENT PLAN

Looe Town Map

Proposals for alterations or additions to the above-mentioned development plan were, on 1st April, 1958, submitted to the Minister of Housing and Local Government. The proposals relate to land situate at Looe in the county of Cornwall. A certified copy of the proposals as submitted has been deposited for public inspection at the office of the County Planning Officer, County Hall, Truro; the Clerk to the Looe Urban District Council, The Guildhall, Looe; the Eastern Area Planning Office, Westbourne, West Street, Liskeard. The copies of the proposals so deposited together with copies of the plan are available for inspection, free of charge, by all persons interested at the places mentioned above between the hours of 9.30 a.m. and 12.30 p.m., and 2 p.m. to 4.45 p.m. on Mondays to Fridays (inclusive) and 9.30 a.m. until noon on Saturdays. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 23rd May, 1958, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Cornwall County Council, County Hall, Truro, and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

COUNTY BOROUGH OF DUDLEY DEVELOPMENT PLAN

Proposals for alterations or additions to the above development plan were, on 20th March, 1958, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the County Borough of Dudley. A certified copy of the proposals as submitted has been deposited for public inspection at the Council House, Dudley. The certified copy of the proposals so deposited together with copies or relevant extracts of the plan are available for inspection free of charge by all persons interested at the place mentioned above between the hours of 9.30 a.m. to 12.30 p.m. and 2.30 p.m. to 5 p.m. on Monday to Friday, and 9.30 a.m. to 12 noon on Saturday. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 14th May, 1958, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the town clerk, the Council House, Dudley, and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

A new edition of the Directory of Employers' Associations, Trade Unions, Joint Organisations, etc., corrected up to January, 1958, has been compiled by the Ministry of Labour and National Service. It is published by H.M. Stationery Office, price 8s. net (by post 8s. 7d.) and copies can be obtained from any Stationery Office bookshop or through any bookseller. The directory contains the title and name and address of the secretary of every organisation in the United Kingdom of employers, of workers and of employers and workers jointly, directly concerned with the negotiation of wages and working conditions, or which provides representatives on bodies which are so concerned.

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949

The following notices of the preparation of maps and statements under the above Act, or of modifications to maps and statements already prepared, have appeared since the tables given in previous volumes and at p. 145, *ante* :—

Draft Maps and Statements

Surveying Authority	Districts covered	Date of notice	Last date for receipt of representations or objections
Berkshire County Council	Abingdon, Wallingford Boroughs; Wantage Urban District; Abingdon, Faringdon, Wallingford, Wantage Rural Districts: modifications to draft map and statement of 28th June, 1956	27th March, 1958	27th April, 1958
Devon County Council	Ashburton Urban District: modifications to draft map and statement of 19th July, 1957	17th March, 1958	30th April, 1958
	Bideford Borough and Rural District; Northam Urban District	14th March, 1958	2nd August, 1958
	Brixham Urban District: further modifications to draft map and statement of 17th January, 1956	10th March, 1958	13th April, 1958
	Newton Abbot Urban District: modifications to draft map and statement of 19th July, 1957	17th March, 1958	30th April, 1958
	Teignmouth Urban District: modifications to draft map and statement of 19th July, 1957	17th March, 1958	30th April, 1958
	Tiverton Borough and Rural District	15th April, 1958	6th September, 1958
Dorset County Council	Dorchester Borough; part of Dorchester Rural District: further modifications to draft map and statement of 21st December, 1954	28th March, 1958	27th April, 1958
Lancashire County Council	Area of the council: modifications to draft map and statement of 10th June, 1953	8th April, 1958	8th May, 1958
Montgomeryshire County Council	Welshpool, Montgomery, Llanidloes Municipal Boroughs; Machynlleth and Newtown, Llanllwchaiarn Urban Districts; Forden Rural District	25th March, 1958	30th July, 1958
North Riding County Council	Various parishes in the area of the council: further modifications	21st March, 1958	24th April, 1958

Provisional Map and Statement

Surveying Authority	District covered	Date of notice	Last date for applications to Quarter Sessions
Bristol City and County Council	Area of the Council	21st February, 1958	22nd March, 1958

Definitive Maps and Statements

Surveying Authority	Districts covered	Date of notice	Last date for applications to the High Court
Devon County Council	Crediton Urban and Rural Districts	25th February, 1958	7th April, 1958
West Suffolk County Council	Bury St. Edmunds Borough; Hadleigh, Haverhill, Newmarket Urban Districts; Clare, Mildenhall Rural Districts	7th February, 1958	21st March, 1958

Revision of Definitive Map and Statement

Surveying Authority	Date of notice	Last date for receipt of representations or objections
Durham County Council	7th February, 1958	21st June, 1958

THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED

In a preliminary announcement dated 22nd April, the directors announced that, although sales were higher, slightly lower profit margins and exceptional administrative expenses resulted in the profit for the year 1957, after providing £42,560 (*£46,907*) for taxation, being lower at £58,978 (*£76,486*). A dividend of 9 per cent. (*12 per cent.*) for the year is recommended, absorbing £15,525 net (*£20,700*). The gross bonus payable to the staff amounts to £24,500 (*£38,000*). General reserve receives £15,000 (*same*) and women's pension provision £3,000 (*£2,500*). Carry forward £57,675 (*£56,722*). Meeting: 22nd May. Registers closed: 9th to 22nd May inclusive.

Wills and Bequests

Mr. Gwilym Henry Spooner Roberts, solicitor, of Llangefni, Anglesey, left £6,179 (£5,818 net).

Mr. Richard Gordon Roberts, solicitor, of Llangefni, Anglesey, left £36,179 (£35,253 net).

OBITUARY

Mr. F. W. Derry

Mr. Frederick William Derry, Coroner for the Borough of Much Wenlock, died recently, aged 79. He was an Honorary Freeman of the Borough and its town clerk for twenty-five years. He had been clerk to the Borough's Income Tax Commissioners since 1926 and was admitted in 1907.

Mr. R. H. Latter

Mr. Robert Harold Latter, solicitor to the St. Edmundsbury and Ipswich diocesan board of finance, died on 11th April, at Ipswich, aged 55. He was admitted in 1931.

PRINCIPAL ARTICLES APPEARING IN VOL. 102

5th to 26th April, 1958

For list of articles published up to and including 29th March, see *ante*, p. 236

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